

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 201

Citations Affected: IC 36-7-4.

Synopsis: Land use. Specifies that review of a land use decision of a legislative body or the board of zoning appeals by certiorari is initiated by filing a petition with the court. Sets forth the persons that a remonstrator must notify of the filing of a petition for writ of certiorari. Provides that an adverse party is not required to be named as a party to the petition for writ of certiorari. Provides that a person who is not an elected official may serve on an advisory plan commission, which is created by joinder agreement, to fill the vacancy of a commission member who also a member of a local legislative body, if no member of the local legislative body will accept appointment to the commission. **(This conference committee report removes a provision that allows a county building authority to sell revenue bonds at a private or negotiated sale. Makes a stylistic change to the provision concerning membership on an advisory plan commission created by joinder agreement.)**

Effective: July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 201 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 36-7-4-1003 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1003. (a) Each decision
- 4 of the legislative body under section 918.6 of this chapter or the board
- 5 of zoning appeals is subject to review by certiorari. Each person
- 6 aggrieved by a decision of the board of zoning appeals or the legislative
- 7 body may ~~present~~ **to file with** the circuit or superior court of the
- 8 county in which the premises affected are located, a verified petition
- 9 setting forth that the decision is illegal in whole or in part and
- 10 specifying the grounds of the illegality. No change of venue from the
- 11 county in which the premises affected are located may be had in any
- 12 cause arising under this section.
- 13 (b) ADVISORY. The person shall ~~present~~ **file** the petition ~~to with~~ the
- 14 court within thirty (30) days after the date of that decision of the board
- 15 of zoning appeals.
- 16 (c) AREA. The person shall ~~present~~ **file** the petition ~~to with~~ the court
- 17 within thirty (30) days after the ~~entry~~ **date** of that decision of the board
- 18 of zoning appeals.
- 19 (d) METRO. The person shall ~~present~~ **file** the petition ~~to with~~ the
- 20 court after the expiration of the period within which an official
- 21 designated by the metropolitan development commission may file an
- 22 appeal under section 922 of this chapter but within thirty (30) days

after the date of that decision of the board of zoning appeals. However, if the official files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to review by certiorari, in accordance with this section. The official or department of metropolitan development may not seek review by certiorari of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

SECTION 2. IC 36-7-4-1005 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1005. (a) On filing a petition for a writ of certiorari with the clerk of the court, the petitioner **for the writ of certiorari shall give notice of the petition as follows:**

(1) If the petitioner is the applicant or petitioner for the use, special exception, or variance, the petitioner shall have a notice served by the sheriff of the county on each adverse party as shown by the record of the case in the office of the board of zoning appeals.

(2) If the petitioner is not the applicant for the use, special exception, or variance and is a person aggrieved by the decision of a board of zoning appeals as set forth in section 1003 of this chapter, the petitioner shall have a notice served by the sheriff of the county on:

(A) each applicant or petitioner for the use, special exception, or variance; and

(B) each owner of the property that is the subject of the application or petition for the use, special exception, or variance.

The service of the notice by the sheriff on the chairman or secretary of the board of zoning appeals constitutes notice of the filing of the petition to the board of zoning appeals, to the municipality or county, and to any municipal or county official or board charged with the enforcement of the zoning ordinance. No other summons or notice is necessary when filing a petition.

(b) An adverse party under this section is any property owner whose interests are opposed to the petitioner for the writ of certiorari and who appeared at the hearing before the board of zoning appeals either in person or by a written remonstrance or other document that is part of the hearing record. If the petitioner was an unsuccessful appellant in the administrative appeal, or an unsuccessful petitioner or applicant for a variance, special exception, or special or conditional use, and the record shows a written remonstrance or other document opposing the interest of the petitioner that contains more than three (3) names, the petitioner shall have notice served on the three (3) property owners whose names appear first on the remonstrance or document. Notice to the other persons named is not required.

(c) Notice given under subsection (a) must state:

- (1) that a petition for a writ of certiorari, asking for a review of the decision of the board of zoning appeals, has been filed in the court;
- (2) the premises affected; and
- (3) the date of the decision.

(d) An adverse party who is entitled to notice of a petition for writ of certiorari under subsection (a) is not required to be named

1 **as a party to the petition for writ of certiorari.**

2 SECTION 3. IC 36-7-4-1006 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1006. ~~On presentation~~
 4 ~~of a petition for a writ of certiorari,~~ The court shall direct the board of
 5 zoning appeals, within twenty (20) days after the date ~~of~~ the petition is
 6 **filed,** to show cause why a writ of certiorari should not issue. If the
 7 board fails to show to the satisfaction of the court that a writ should not
 8 issue, then the court may allow a writ of certiorari directed to the board.
 9 The writ must prescribe the time in which a return shall be made to it.
 10 This time must not be less than ten (10) days from the date of issuance
 11 of the writ, and the court may extend the time.

12 SECTION 4. IC 36-7-4-1210.6 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2003]: **Sec. 1210.6. (a) ADVISORY. This**
 15 **section applies to an advisory plan commission that is:**

16 **(1) created through a joinder agreement; and**

17 **(2) composed of nine (9) members, some of whom are**
 18 **appointed from a legislative branch of local government.**

19 **(b) Notwithstanding any other provision, if:**

20 **(1) there is a vacancy in the membership of a plan commission**
 21 **that is required by statute to be filled by a member of a**
 22 **legislative body of local government; and**

23 **(2) no member of the legislative body of local government will**
 24 **accept an appointment to fill the vacancy;**

25 **the appointing authority may appoint a person from the**
 26 **community who is not an elected official to serve on the advisory**
 27 **plan commission for a term of one (1) year.**

28 **(c) The person appointed under subsection (b) may be**
 29 **reappointed to successive terms.**

(Reference is to ESB 201 as reprinted April 11, 2003.)

Conference Committee Report
on
Engrossed Senate Bill 201

Signed by:

Senator Clark
Chairperson

Representative Stevenson

Senator Dembowski

Representative Hinkle

Senate Conferees

House Conferees